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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	CC Docket No. 96-98

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REPLY COMMENTS OF COMCAST CELLULAR COMMUNICATIONS, INC.

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SUMMARY

Comcast Cellular Communications, Inc. ("Comcast Cellular") urges the Commission to establish a national framework for LEC-to-CMRS interconnection and reciprocal compensation. The Commission already has a preponderance of evidence submitted in the *CMRS Interconnection Notice* proceeding demonstrating that LEC-to-CMRS interconnection and reciprocal compensation arrangements are unlawful and violate existing statutory obligations under Section 332(c) of the Omnibus Budget Reconciliation Act of 1993 (the "Budget Act") and Commission requirements No party has rebutted the conclusion that existing LEC interconnection rates assessed upon CMRS providers are unlawful and illegally withhold statutorily and Commission-required reciprocal compensation.

The Telecommunications Act of 1996 (the "1996 Act") adds to those rights of CMRS providers already created by the Budget Act to just, reasonable and nondiscriminatory interconnection and reciprocal compensation. The 1996 Act therefore expands the options available to CMRS providers to obtain interconnection and mutual compensation both under Section 332(c) of the Budget Act of 1993 and Sections 251 and 252 of the 1996 Act.

Under the statutory mandate of both Section 332 of the Budget Act *and* the interconnection provisions of Sections 251 and 252 of the 1996 Act, moreover, incumbent local exchange carriers ("ILECs") are affirmatively obligated to make reciprocal compensation arrangements for the transport and termination of CMRS traffic available to CMRS providers at incremental cost. With the enactment of Section 252(d)(2)(B) of the 1996 Act, Congress has given its blessing to bill and keep as the economically and legally

correct method of providing reciprocal compensation between ILECs and CMRS providers. The time is now for the Commission act to adopt its tentative conclusion of last year that bill and keep reciprocal compensation "represents the best interim solution." *Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, Notice of Proposed Rulemaking, CC Docket No. 95-185, FCC 95-505, at ¶ 60 (released January 11, 1996) ("*CMRS Interconnection Notice*").

Time is of the essence for the Commission to follow through on Congress's statutory mandate to establish cost-based reciprocal compensation arrangements for LEC-to-CMRS interconnection through interim bill and keep. Establishing a national paradigm for LEC-to-CMRS interconnection and reciprocal compensation is vital to prevent anticompetitive state-by-state outcomes. Based on the comprehensive and uncontested record already before it, the Commission must act now to implement an interim bill and keep mechanism and cost-based interconnection rates to redress anticompetitive LEC-to-CMRS intercarrier contract rates and to establish cost-based reciprocal compensation.

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To: The Commission

REPLY COMMENTS

Comcast Cellular Communications, Inc. ("Comcast Cellular") hereby submits its reply comments in response to the Commission's *Notice* in the above-captioned proceeding.[1/]

I. INTRODUCTION

Comcast Cellular has a compelling interest in the Commission's development of pro-competitive interconnection policies. Comcast Cellular is a leading cellular operator with coverage in the most heavily traveled sectors of the New Jersey-Pennsylvania-Delaware tri-state area, including major urban centers such as Philadelphia and Wilmington. Committed to the delivery of state-of-the-art wireless communications services, Comcast Cellular provides its wireless customers with a variety of cellular enhancements such as wireless fax and data capability, e-mail functions, and concierge-style *411 and Voice Connect services that allow mobile customers to access directory information concerning restaurants, merchants and other local amenities upon request and to connect calls to these

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1/ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, Notice of Proposed Rulemaking, CC Docket No. 96-89 (released April 19, 1996) (the "*Notice*").

locations at no additional charge. Comcast Cellular's parent, Comcast Corporation ("Comcast"), also is a participant in the wireless industry nationwide with ownership interests in Sprint Spectrum, L.P., and Nextel Communications, Inc.

The interconnection and access policies that the Commission develops in this proceeding pursuant to the Telecommunications Act of 1996 (the "1996 Act") will have lasting effects on landline and wireless local competition. The Commission therefore must adopt certain workable principles that ensure just, reasonable and nondiscriminatory interconnection by CMRS providers to incumbent LEC networks. Today, despite the passage of nine years and many Commission pronouncements intended to ensure that LECs comply with statutory obligations, CMRS providers still do not enjoy these rights. Indeed, Bell Atlantic — the company with which Comcast Cellular interconnects — asserts that compensation of 1.2 cents per minute or less should be presumed lawful.[2/] Today, however, Comcast Cellular pays Bell Atlantic 2.5 cents per minute for call termination that is not reciprocal.[3/]

First, the Commission must clarify that the cumulative effect of the Omnibus Budget Reconciliation Act of 1993 (the "Budget Act" or "Budget Act of 1993") *and* the 1996 Act is to place LEC-to-CMRS interconnection within an exclusively federal regulatory framework. The interconnection provisions of the 1996 Act expand the interconnection options already available to CMRS providers under the Budget Act, just as the Budget Act

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2/ *See* Comments of Bell Atlantic, filed in CC Docket No. 96-98, on May 16, 1996, at 43 ("Bell Atlantic Comments").

3/ *See* Comments of Comcast Corporation, filed in CC Docket No. 95-185, on March 4, 1996, at 5-6 ("Comcast CMRS Comments").

expanded options available under the Communications Act of 1934. The interconnection obligations imposed upon ILECs by Sections 251 and 252 of the 1996 Act thus are additive to, rather than mutually exclusive of, duties already imposed upon LECs by the Budget Act of 1993 and long-standing Commission policies to provide just and reasonable rates, terms and conditions of interconnection and mutual compensation for transport and termination of traffic by and from CMRS providers.[4/] The Commission therefore must act with dispatch to implement a federal regulatory framework for LEC-to-CMRS interconnection and mutual compensation.

In addition, the Commission should not allow this mammoth proceeding to delay or inhibit resolution of the critical issues being addressed in the pending *CMRS Interconnection Notice* rulemaking.[5/] Through its parent corporation, Comcast Cellular has demonstrated that LEC-to-CMRS interconnection and reciprocal compensation are in dire need of immediate and exclusively federal reform.[6/] No evidence has been presented in the *CMRS Interconnection Notice* proceeding or in the comments in the instant docket to rebut

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4/ Section 601(c) of the 1996 Act explicitly provides that:

> [the 1996] Act and the amendments made by [the 1996] Act shall not be construed to modify, impair, or supersede Federal, State or local law unless expressly so provided in [the 1996] Act or amendments.

Telecommunications Act of 1996, § 601(c).

5/ *See Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers; Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Service Providers*, Notice of Proposed Rulemaking, CC Docket Nos. 95-185 & 94-54, released January 11, 1996) ("*CMRS Interconnection Notice*").

6/ *See* Comcast CMRS Comments; Reply Comments of Comcast Corporation, filed in CC Docket No. 95-185, on March 25, 1996 ("Comcast CMRS Reply Comments").

the conclusion that the Commission has an affirmative statutory duty and authority under the Budget Act to fashion a regulatory remedy to redress past and current incumbent LEC ("ILEC") abuse of market power in ILEC-to-CMRS interconnection arrangements.

Finally and most importantly, the Commission must act with dispatch to redress long-standing anticompetitive LEC-to-CMRS intercarrier contracts by establishing a national framework for incremental cost-based, reciprocal compensation. Establishing interim bill and keep for LEC-to-CMRS reciprocal call termination will provide a necessary correction to anticompetitive abuses in one-sided intercarrier contracts privately negotiated by incumbent LECs. As the Commission aptly observes in the *Notice*, "[l]ingering disputes over the terms and conditions of interconnection due to confusion or ambiguity create the potential for incumbent LECs to delay entry." *Id.* at ¶ 50.

II. THE 1996 ACT CONFIRMS THAT THE COMMISSION MUST ESTABLISH A NATIONAL FRAMEWORK FOR LEC-TO-CMRS INTERCONNECTION AND RECIPROCAL COMPENSATION. [*Notice*, Part II(B)(2)(e)(2), ¶¶ 166-169]

Key points:

- CMRS providers are entitled to interconnection under Section 332(c)(3) of the Budget Act of 1993 and Sections 251(c)(2) and 251(b)(5) of the 1996 Act.
- The interconnection provisions of the 1996 Act expand the choices and options available to CMRS providers under the Budget Act of 1993 within a uniform, national regulatory framework.
- The Commission must adopt a uniform, national framework for LEC-to-CMRS interconnection and reciprocal compensation based on long run incremental cost, and implemented through an interim bill and keep mechanism.

A. CMRS Providers Are Entitled To Interconnection to ILEC Networks Pursuant to Sections 2(a) and 332(c) of the Budget Act and Existing Commission Precedent.

The statutory framework of the Budget Act of 1993 and sound public policy require that the Commission immediately establish rules to implement CMRS providers' right to interconnect to incumbent LEC networks on a just, reasonable and nondiscriminatory basis. The Budget Act of 1993 established an exclusively federal framework to govern LEC-to-CMRS interconnection and reciprocal compensation. Furthermore, long-standing Commission policies have required that LECs make reciprocal compensation available to CMRS providers on a nondiscriminatory basis. Current LEC-to-CMRS intercarrier interconnection contracts are grossly one-sided in violation of these long-standing principles. Preserving the *status quo* therefore would only perpetuate ILEC abuse of market power to the detriment of CMRS providers and wireless consumers.[7/]

As incontrovertibly demonstrated by Comcast and others in the record of the *CMRS Interconnection Notice* proceeding, Sections 2(a) and 332(c) vest the Commission with exclusive jurisdiction to regulate the rates, terms and conditions of LEC-to-CMRS

7/ Although Bell Atlantic claims that a call termination rate of 1.2 cents per minute be presumptively lawful, it has charged Comcast Cellular 2.5 cents per minute for such call termination without in turn paying Comcast Cellular anything for calls that Bell Atlantic terminates on Comcast Cellular's network. *See* Bell Atlantic Comments, at 43; Comcast CMRS Comments, at 5-6. It is well-documented in CC Docket No. 95-185 that rates paid for interconnection by CMRS providers generally bear no relationship whatsoever to costs LECs incur in providing interconnection. *See, e.g.*, Comments of AirTouch Communications, Inc., filed in CC Docket No. 96-98, on May 16, 1996, at 10-17.

interconnection and establish a federal reciprocal compensation policy.[8/] Notwithstanding ILEC assertions to the contrary, moreover, nothing in Sections 251 and 252 of the 1996 Act indicates that Congress intended state regulation to supplant this exclusive federal authority over LEC-to-CMRS interconnection and reciprocal compensation. On the contrary, Section 601(c) of the 1996 Act explicitly provides that no provision of the 1996 Act shall be "construed to modify, impair, or supersede Federal, State or local law *unless expressly so provided* . . . ." Telecommunications Act of 1996, at § 601(c).

Since 1987, it has been the Commission's policy that Section 201(a) requires: (i) LECs and cellular carriers recover one another's interconnection costs in the same manner as LECs recover their costs from neighboring LECs; and (ii) that LEC-to-cellular interconnection arrangements must provide for mutual compensation.[9/] Existing LEC-to-cellular interconnection arrangements are and have been in gross violation of these requirements.[10/]

Preserving the *status quo* will only perpetuate unlawful LEC discrimination and anticompetitive conduct while forestalling wireless competition in particular and local competition in general, contrary to the underlying purpose of the 1996 Act. Section 252(i) requires that LECs make interconnection arrangements available on a nondiscriminatory

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8/ Interconnection as a "service" is now interstate. *See* Comcast CMRS Comments, at 26-46; Comcast CMRS Reply Comments, at 29-49; Comments of Cellular Telecommunications Industry Association, filed in CC Docket No. 96-98, on May 16, 1996, at 2-6.

9/ *See* notes 28-29 *infra.*

10/ *See* Comcast CMRS Reply Comments, at 9-14.

basis to all similarly situated telecommunications carriers. Contrary to the provisions of Section 252(i), however, LECs currently make reciprocal compensation arrangements available only to neighboring LECs on a cost-based bill and keep basis but do not make the same arrangements available to CMRS providers.[11/]

LEC-to-CMRS interconnection arrangements thus are and have been in violation of statutory requirements and Commission policy, and require immediate redress: Despite the independent statutory mandate of Section 332(c) and long-standing Commission policy established since the *1987 Cellular Interconnection Order* requiring incumbent LECs to make mutual compensation available to cellular providers on a just, reasonable and nondiscriminatory basis, existing LEC-to-cellular intercarrier contracts historically have imposed, and continue to impose, unreasonably discriminatory and non-reciprocal rates upon cellular providers for call termination.[12/] Allowing existing LEC discrimination

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11/ In Pennsylvania, for example, LEC-to-LEC interconnection has been accomplished on an interim bill-and-keep and is currently accomplished through a state-ordered escrow account pending resolution of the interconnection docket. *See Application of MFS Intelenet of Pennsylvania*, Docket Nos. A-310203F0002 *et seq.*, Opinion and Order, at 45-52 (Pennsylvania Pub. Util. Comm'n, adopted September 27, 1995); *see also* Herb Kirchoff, *Pa. PUC OKs Controversial Reciprocal Compensation Approach*, STATE TEL. REG. REP., December 14, 1995, at 1. In contrast, LEC-to-CMRS arrangements do not provide for bill-and-keep arrangements and, in fact, since 1984, Pennsylvania state law has expressly excluded cellular carriers from any state-ordered reciprocal compensation plan. *See, e.g.*, *Implementation of the Omnibus Budget Reconciliation Act of 1993*, Declaratory Order, Interim Rules and Proposed Rulemaking, Docket No. L-00950104, at 5-6 (Pennsylvania Pub. Util. Comm'n, adopted June 8, 1995) (the definition of "public utility" in 66 Pa. C.S. § 102 was amended in 1984 to remove the Pennsylvania commission's authority over cellular industry).

12/ *See* notes 28-29 *infra.*

against CMRS providers to continue even a short additional time without correction, therefore, would undermine Congress's intent in passing the 1996 Act.

B. The Interconnection Provisions of the 1996 Act Expand, Rather Than Reduce, the Comprehensive Authority Over LEC-to-CMRS Interconnection Vested in the Commission by the Budget Act.

The statutory framework and legislative history of the 1996 Act demonstrate that Section 251 vests CMRS providers (who are also telecommunications carriers) with interconnection and reciprocal compensation rights that are additive to the interconnection rights created in Section 332(c). The Commission thus should not adopt the *Notice*'s tentative proposal that a CMRS provider be required to elect whether to receive interconnection from a LEC under Section 251 or Section 332(c). *Id.* at ¶ 59.

The *Notice*'s tentative proposal that CMRS providers be required to make an election between receiving interconnection under Sections 251(c)(2) or 332(c) is expressly contrary to the provisions of both the Budget Act and the 1996 Act. In fact, Congress did not give the Commission the discretion to depart from its requirements.[13/]

Congress manifested its intent, in enacting Section 332(c), to federalize LEC-to-CMRS interconnection:

> [t]o foster the growth and development of mobile services that, by their nature, *operate without regard to state lines* as an integral part of the national telecommunications infrastructure . . . [and] to promote . . .

13/ Moreover, Congress knows how to adopt an election of remedies provision. *See* 47 U.S.C. § 207 (1996). Recovery of claims for damages may be brought before either the Commission or a federal district court, "but [a complainant shall not have the right to pursue both such remedies." *See id.* No similar limiting provision is found in the 1996 Act.

> interconnection . . . to enhance competition and advance a seamless national network.[14/]

Similarly, Congress enacted the local competition and interconnection provisions of the 1996 Act "to provide for a pro-competitive, de-regulatory *national* policy framework . . . by opening *all* telecommunications markets to competition."[15/]

CMRS providers plainly fall, moreover, within the "zone of interests" to be protected by the just, reasonable and nondiscriminatory interconnection provisions of Sections 251 *and* Section 332(c).[16/] As the ILECs admit in their comments,[17/] moreover, a CMRS provider is a "requesting telecommunications carrier" and thereby entitled to receive interconnection under Section 251(c)(2) and transport and termination under Section 251(b)(5).[18/] The Commission has a statutory duty, therefore, to enforce CMRS providers' rights to interconnect to, and receive reciprocal compensation from, ILEC networks under

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14/ *See* H.R. Rep. No. 103-111, 103d Cong, 1st Sess., at 260-1, reprinted in 1993 U.S.C.C.A.N. 378, 587-8 (emphasis added) ("Budget Act House Report").

15/ S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess. 1 (1996) (emphasis added) (the "Conference Report").

16/ *See MCI v. FCC*, 917 F.2d 30, 36 (D.C. Cir. 1990).

17/ *See, e.g.*, Comments of Pacific Telesis Group, filed in CC Docket No. 96-98, on May 16, 1996, at 80-83 ("PacTel Comments"); Comments of BellSouth, at 63-4 ("BellSouth Comments"); Comments of United States Telephone Association, at 62-70 ("USTA Comments").

18/ Both "telecommunications carriers" and CMRS providers are deemed to be common carrier service providers because they transmit "information of the user's choosing without change in the form or content of the information as sent and received." *See* 47 U.S.C. §§ 153(44), 332(c)(1)(A).

both the 1996 Act and the Budget Act, and not to put CMRS providers to some premature, undefined Hobson's choice.

Furthermore, the argument advanced by BOC commenters in this proceeding that CMRS providers *must* take interconnection exclusively through Section 251(c)(2) leads to the unsupportable conclusion that Congress intended for Section 251 to repeal Section 332(c).[19/] It is well-settled, however, that repeal of a federal statute by implication is highly disfavored.[20/] The proponent of repeal by implication, moreover, bears a high burden.[21/] No party has met this burden in CC No. Docket 95-185 or in the instant proceeding. Under the principle of statutory construction — that validly enacted federal laws are presumed to fulfill some purpose — both Sections 332(c) and 251 must be given full

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19/ *See, e.g.*, BellSouth Comments, at 63-64; PacTel Comments, at 80-83; USTA Comments, at 62-70.

20/ Section 601(c) of the 1996 Act explicitly provides that:

> [the 1996] Act and the amendments made by [the 1996] Act shall not be construed to modify, impair, or supersede Federal, State or local law unless expressly so provided in [the 1996] Act or amendments.

Telecommunications Act of 1996, § 601(c). *See also Radzanower v. Touche Ross & Co.*, 426 U.S. 148, 155, 96 S.Ct. 1989, 1993 (1976) ("[i]t is, of course, a cardinal principle of statutory construction that repeals by implication are not favored") (quoting *United States v. Continental Tune Corp.*, 425 U.S. 164, 168, 96 S.Ct. 1319, 1323 (1976)).

21/ *See id.*; *see also Posadas v. National City Bank*, 296 U.S. 497, 503, 56 S.Ct. 349, 352 (1936).

effect.[22/] That being the case, there is only one possible conclusion — both Sections 251 and 332(c) apply to LEC-to-CMRS interconnection.[23/]

C. The 1996 Act Supports Adoption of a National Rule That LECs Make Reciprocal Compensation Available to CMRS Providers for Transport and Termination of Telecommunications Based on Long Run Incremental Cost.

Under Section 332(c) and 201(a), the *CMRS Interconnection Notice* correctly tentatively concluded that the proper cost standard for reciprocal compensation between LECs and CMRS providers should be based on incremental cost, and that bill and keep is the most effective interim method of implementing a transition to cost-based reciprocal compensation. The record in the *CMRS Interconnection Notice* proceeding overwhelmingly supports the Commission's tentative conclusion.[24/] The 1996 Act provides further support for the adoption of a national rule that LECs make reciprocal compensation available to

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22/ Proper statutory analysis requires that *all* parts of a statute be considered when the meaning of the statute and the intent of Congress is determined. *See, e.g., Crandon v. U.S.*, 494 U.S. 152, 158 (1990) (Supreme Court looks to "design of the statute as a whole."); *Mountain States Tel. & Tel. v. Pueblo of Santa Ana*, 472 U.S. 237, 249 (1985) (statutes should be interpreted so as not to render one part inoperative); *see also* 2A Sutherland Stat. Const. § 46.05 (statutes are "passed as a whole and not in parts or sections") and § 46.06 ("[a] statute should be construed so that effect is given to all its provisions . . . . .").

23/ As demonstrated in Comcast's comments in Docket No. 95-185, the savings clause of Section 251(i) demonstrates that Congress intended Section 251's interconnection provisions to add to, rather than exclude, powers over interconnection that the Commission already exercised pursuant to Section 201 upon enactment of the 1996 Act. *See* Comcast CMRS Comments, at 42-44. Because the Commission already possessed authority over LEC-to-CMRS interconnection pursuant Sections 332(c) and 201(a), as well as Section 2(b), when the 1996 Act was enacted, the interconnection provisions of Section 251 therefore can only expand, rather than reduce, Commission authority over LEC-to-CMRS interconnection. *See also* Telecommunications Act of 1996, § 601(c).

24/ *See* Comcast CMRS Reply Comments, at 17-26.

CMRS providers for transport and termination of telecommunications based on long run incremental cost ("LRIC").

Section 252(d)(2) establishes an incremental cost-based, LRIC standard for transport and termination of local traffic between an ILEC and a facilities-based competitive LEC under a mutual compensation arrangement. 47 U.S.C. § 252(d)(2). Significantly, Section 252(d)(2)(B) expressly provides that bill and keep may be used to recover incremental cost in reciprocal compensation arrangements. *See id.* The Section 252(d)(2) incremental cost standard validates the correctness of the Commission's tentative conclusions to establish an interim bill and keep mechanism and long term, incremental cost-based rate for LEC-to-CMRS reciprocal compensation as an economically efficient compensation mechanism.[25/]

III. THE COMMISSION MUST ACT WITH DISPATCH TO REDRESS LONG-STANDING ANTICOMPETITIVE LEC-TO-CELLULAR INTERCARRIER CONTRACTS BY ESTABLISHING A NATIONAL FRAMEWORK FOR INCREMENTAL COST-BASED, RECIPROCAL COMPENSATION. [*Notice*, Part II(B)(2)(e)(2), ¶¶ 166-169]

Key points:

- Establishing a uniform, federal framework pricing LEC-to-CMRS reciprocal compensation based on interim bill and keep and long run incremental cost is a necessary correction to existing and past discrimination and anticompetitive abuse in

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25/ ILEC commenters improperly assert that the "additional cost" standard for reciprocal compensation under Section 252(d)(2) includes "total service long run incremental cost", joint and common costs and embedded costs. *See* Comments of United States Telephone Association, filed in CC Docket No. 96-98, on May 16, 1996, at 78-84 ("USTA Comments"); BellSouth Comments, at 70-71. Reciprocal compensation based on joint and common costs and embedded costs and a TSLRIC standard flatly contradicts Congress's intent to establish a LRIC, incremental cost-based rate for reciprocal compensation for transport and termination of traffic. It also ignores that bill and keep is the *only* compensation mechanism expressly approved by Congress for transport and termination. *See* 47 U.S.C. § 252(d)(2).

LEC-to-CMRS interconnection arrangements, and will not "favor" wireless technologies over landline competitors.

- LECs must not be allowed to impose illegal and improper above-cost surcharges upon CMRS providers.

- The Commission must act with dispatch to establish a uniform, national framework for LEC-to-CMRS interconnection and reciprocal compensation to prevent anticompetitive state barriers to wireless competition.

- Now is the time for the Commission to act on the *CMRS Interconnection Notice* proceeding to establish a uniform, national LEC-to-CMRS interconnection policy.

A. Granting CMRS Providers Relief Under §332 Will Not "Favor" Wireless Technology Over Landline Competitors.

Immediate adoption of a federal LEC-to-CMRS interconnection and reciprocal compensation policy based on incremental cost and implemented through an interim bill and keep mechanism will not "favor" CMRS providers over landline competitors. In fact, precisely the opposite is true: By either failing to act expeditiously or requiring CMRS providers to proceed through the Sections 251/252 state process, the Commission would be abdicating its responsibility under Section 332 to correct past discrimination in favor of landline LECs to the detriment of CMRS providers.

In seeking comment on whether it would be "sound policy for the Commission to distinguish between [CMRS providers and other] telecommunications carriers on the basis of the technology they use," the *Notice* implies that allowing CMRS providers to choose whether to obtain reciprocal compensation under the specific terms of Sections 332(c) or 251 would discriminatorily favor CMRS providers over landline telecommunications carriers. *Notice*, at ¶ 169. Adoption of a Commission rule of incremental cost-based, reciprocal compensation for wireless carriers based on bill and keep, however, is not

favoritism. To conclude that adoption of a federal bill and keep policy for LEC-to-CMRS interconnection and reciprocal compensation would unreasonably "favor" CMRS providers, the Commission would have to find that there is no public interest or statutory basis for adoption of such a policy. Nothing could be farther from the truth.[26/] Adopting the tentative conclusion in the *CMRS Interconnection Notice* to establish a federal interconnection policy through bill and keep would not "favor" CMRS providers because it would fulfill the Congressional mandate already established by the Budget Act's amendments to Section 332. The voluminous record collected in the *CMRS Interconnection Notice* proceeding also demonstrates that establishing a federal bill and keep policy for LEC-to-CMRS interconnection is in the public interest and wholly within the Commission's exclusive purview.[27/]

Furthermore, current LEC-to-CMRS interconnection arrangements violate existing Commission policies.[28/] At least since 1987, moreover. LECs have been under an

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26/ Moreover, ILEC claims that a CMRS provider's right to reciprocal compensation is limited exclusively to Section 251(b)(5) are entirely unpersuasive. *See, e.g.*, BellSouth Comments, at 63-64; PacTel Comments, at 80-83; USTA Comments, at 62-70. Although the LECs may wish that Congress had not created a federal right to interconnection for all CMRS providers in amending Section 332 in 1993, wishing does not make it so. *See Ex Parte* Letter, from Leonard J. Kennedy, Counsel for Comcast Cellular Communications, Inc., to William F. Caton, Acting Secretary, FCC, filed in GN Docket Nos. 93-252 & 94-54, on October 18, 1995.

27/ Based upon existing state Commission actions, there is room for legitimate concern that CMRS providers will be harmed competitively if they are forced through a state-by-state negotiation and arbitration process.

28/ In 1987, the Commission held that the principle of mutual compensation should apply to LEC-to-cellular interconnection contracts, stating that:

cellular and landline carriers [must] allocate and recover their interconnection

obligation to make interconnection arrangements available that allow for mutual recovery of costs between a cellular carrier and a LEC in the same way as costs are recovered between neighboring LECs.[29/] LEC-to-LEC arrangements have consistently provided bill and keep in "extended area service" arrangements.[30/] In contrast, Comcast Cellular has been paying Bell Atlantic a rate of 2.5 cents per minute for call termination for almost a

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> costs through just and reasonable interconnection contracts, *just as local exchange carriers do today in connecting carrier relationships.*

See The Need To Promote Competition and the Efficient Use of Spectrum for Radio Common Carrier Service, 2 FCC Rcd 2910, 2915, 2918 n.28 (1987) ("*1987 Cellular Interconnection Order*"). In 1993, the Commission reaffirmed that mutual compensation must apply in all LEC-to-CMRS interconnection arrangements, holding that:

> the principle of mutual compensation shall apply, under which LECs shall compensate CMRS providers for the reasonable costs incurred by such providers in terminating traffic that originates on LEC facilities. [CMRS] providers, as well, shall be required to provide such compensation to LECs in connection with mobile-originated traffic terminating on LEC facilities.

See Implementation of Sections 3(n) and 332 of the Communications Act; Regulatory Treatment of Mobile Services, Second Report and Order, GN Docket No. 93-252, 9 FCC 1411, 1498 ¶ 232 (1993), *recon. pending*; *see also* 47 U.S.C. § 20.11(b).

29/ *See 1987 Cellular Interconnection Order*, 2 FCC Rcd at 2915 ¶ 45; *see also* note 28 *supra.*

30/ *See Application of Electric Lightwave, Inc. for Certificate of Authority To Provide Telecommunications Services in Oregon*, Order, CP 1, CP 14, CP 15, at 64-65 (Pub. Util. Comm'n of Oregon, adopted January 12, 1996); *Washington Util. & Transp. Comm'n v. U S West Communications, Inc.*, Fourth Supplemental Order Rejecting Tariff Filings and Ordering Refiling, Granting Complaints, In Part, Docket Nos. UT-941464 *et seq.*, at 42-3 (Wash.Util. & Transp. Comm'n, adopted October 31, 1995); *see also* Herb Kirchoff, *States Vary on Ameritech's Right To Press for New EAS Terms*, STATE TEL. REG. REP., April 18, 1996, at 1.

decade, while Bell Atlantic has paid Comcast Cellular nothing for Comcast's transport and termination of calls originated over Bell Atlantic's facilities.[31/]

B. Existing LEC-to-CMRS Interconnection Arrangements Impose Unlawful Above-Cost Surcharges on CMRS Providers.

Existing LEC-to-CMRS interconnection arrangements improperly and unlawfully impose above-cost surcharges on CMRS providers. The Commission has tentatively concluded that LEC-to-CMRS interconnection should be priced at incremental cost. Furthermore, it is well-established that the incremental cost of LEC call termination is 0.2 cents per minute.[32/] Current LEC call termination rates, however, which are over a thousand percent above incremental cost, are blatantly unlawful.[33/]

31/ *See* note 7 *supra.*

32/ The most comprehensive public engineering study of incremental cost of interconnection was done by the Incremental Cost Task Force with members from GTE, Pacific Bell, the California Public Utilities Commission, and the RAND Corporation. *See* Bridger Mitchell, INCREMENTAL COSTS OF TELEPHONE ACCESS AND LOCAL USE (Santa Monica, Calif: The Rand Corporation, 1990) ("Incremental Cost Task Force Study") *reprinted in* William Pollard, ed., MARGINAL COST TECHNIQUES FOR TELEPHONE SERVICES: SYMPOSIUM PROCEEDINGS, NRRI 91-6, (Columbus, Ohio: National Regulatory Research Institute, 1991) ("MARGINAL COST TECHNIQUES") *summarized in* Dr. Gerald W. Brock, *Incremental Cost of Local Usage*, prepared on behalf of Cox Enterprises, Inc., and filed in CC Docket No. 94-54, on March 21, 1995 ("Brock Incremental Cost Paper"). Based on the Incremental Cost Task Force Study, incremental cost of LEC call termination has been estimated to be 0.2 cents per minute. *See id.* An independent engineering study prepared by the New England Telephone for the Massachusetts Public Utility Commission also found that the incremental cost of LEC call termination is 0.2 cents per minute. *See* Brock Incremental Cost Paper at n.4 (citing Lewis J. Perl and Jonathan Falk, *The Use of Econometric Analysis in Estimating Marginal Cost*, in MARGINAL COST TECHNIQUES).

33/ *See* Comcast CMRS Comments, at nn. 8-9, 21. Furthermore, Bell Atlantic has claimed that a LEC interconnection rate of 1.2 cents per minute, which is 600 percent above incremental cost of 0.2 cents per minute, is "presumptively reasonable." *See* Bell Atlantic Comments, at 43.

As such, existing LEC-to-CMRS interconnection arrangements contradict the requirements of the 1996 Act that reciprocal compensation be based on incremental cost. *See* 47 U.S.C. §§ 251(b)(5) and 252(d)(2)(A). ILEC call termination rates improperly and unlawfully recover unlawful above-cost surcharges in contravention of Sections 251(b)(5) and 252(d)(2)(A) of the 1996 Act.

C. The Commission Must Act With Dispatch To Establish a National Competitive LEC-to-CMRS Interconnection Policy To Avoid State-by-State Anticompetitive Outcomes.

Existing barriers to entry created by state-by-state regulation of LEC-to-CMRS interconnection arrangements are contrary to the Commission's goals and the purposes of the Budget Act and the 1996 Act. The Commission must act quickly to establish a national LEC-to-CMRS interconnection framework to prevent harmful state regulation from hindering the development of a national wireless information infrastructure. Section 253 of the 1996 Act and Section 332(c)(3) of the Budget Act of 1993 require the Commission to act promptly to preempt any state barriers to entry and development of CMRS competition.

Without a uniform national LEC-to-CMRS interconnection and reciprocal compensation policy, states could erect and continue to apply existing *de facto* barriers to competition. States have imposed certification and/or licensing requirements on wireless carriers that will hamper their ability to obtain competitively priced interconnection from ILECs.[34/] Still other states no longer regulate wireless carriers, but extend favorable local

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34/ *See* Alaska-3 Cellular LLC d/b/a Cellular One, Motion for Declaratory Ruling Concerning Preemption of Alaska Call Routing and Interexchange Certification Regulations as Applied to Cellular Carriers, File No. WTP/POL 95-2, filed on September

competition rules to landline carriers.[35/] Allowing state action or inaction to erect *de facto* barriers to competition would violate the requirement in Section 253 of the 1996 Act and Section 332(c)(3)(A) of the Budget Act of 1993 that the Commission preempt any state barriers to entry. 47 U.S.C. §§ 253, 332(c)(3)(A). In addition, many of these provisions blatantly violate Section 252(i), which makes telecommunications carriers beneficiaries of the provisions of Section 251 and 252.

D. Now Is the Time for the Commission To Remedy Past LEC Wrongs That Have Hindered Wireless Competitors from Realizing Their Full Market Potential.

The record in the *CMRS Interconnection Notice* proceeding and CC Docket Nos. 94-54 and 95-185 is now complete. No public policy rationale has been advanced to rebut the presumption that, under the Commission's existing policies, the Budget Act and the 1996 Act, CMRS providers are entitled to just, reasonable and nondiscriminatory reciprocal

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22, 1995 (Alaska PUC may require cellular carrier to obtain certificate as an intrastate IXC to transmit cellular calls carried within its RSA that would be intrastate toll calls if carried on the landline network); *see also* Pittencrieff Communications, Inc., Petition for Declaratory Ruling Regarding Preemption of Texas Public Util. Reg. Act of 1994, filed on January 11, 1996 (Texas statute imposes "significant revenue-based fee" on CMRS providers).

35/ Some states have limited or are considering limiting interim call termination rate structures and bill and keep arrangements only to facilities-based landline competitors that have received certification as "competitive local exchange carriers." *See Order Instituting Rulemaking on the Commission's Own Motion Into Competition for Local Exchange Service*, R.95-04-043, I.95-04-044, Decision 95-12-056, at 13 (Calif. Pub. Util. Comm'n, adopted December 20, 1995) (sets hearing on issue whether LECs must offer cellular providers interim bill and keep provisions established for CLECs); *DPUC Investigation Into Wireless Mutual Compensation Plans*, Docket No. 95-040-04, at 15 (Connecticut Dep't of Pub. Util. Control, adopted September 22, 1995) (expressly prohibits LECs from providing interim bill and keep arrangements made available to CLECs to wireless carriers); *see also* note 11 *supra.*

compensation to LEC facilities at incremental cost. Nor has any evidence been proffered that undermines the Commission's tentative conclusion of last year that bill and keep "represents the best interim solution" for LEC-to-CMRS interconnection. *CMRS Interconnection Notice*, at ¶¶ 60-62. In light of all of the foregoing, the Commission must act now.

Deferring resolution of the *CMRS Interconnection Notice* proceeding pending completion of the instant rulemaking, or access charge reform, would result in significant financial and competitive harm to the wireless industry without collecting any more useful information than is already in the record. Protracted cost proceedings are not the answer, and the Commission must now adopt the most effective interim approach to LEC-to-CMRS reciprocal compensation — bill and keep. Restricting LEC-to-CMRS interconnection and mutual compensation exclusively to Sections 251 and 252 would defeat the statutory purpose of Section 332(c) and undermine already-existing ILEC obligations to make interconnection and mutual compensation available on a just, reasonable and nondiscriminatory basis to CMRS providers.

Limiting CMRS providers to the strictures of Sections 251 and 252 also would straight-jacket the development of nondiscriminatory LEC-to-CMRS mutual compensation agreements and harmfully delay implementation of Congress's goals for wireless competition set forth in the Budget Act and Commission policies. As the Commission stated in the *InWATS/OutWATS* proceeding:

> [w]ith the passage of time, it is becoming ever clearer that, notwithstanding our additional experience, we simply do not possess the resources to confidently oversee this mammoth process and to review and evaluate with

> sufficient dispatch numerous volumes of cost data which are submitted to us as its yearly product.[36/]

The Commission must make a decision now rather than engaging in more inquiry.

IV. CONCLUSION

For all of the foregoing reasons, Comcast Cellular urges the Commission expeditiously to establish a national framework for LEC-to-CMRS interconnection and reciprocal compensation through bill and keep. Establishing a uniform national policy to implement just, reasonable and nondiscriminatory rates based on long run incremental cost for LEC-to-CMRS interconnection and reciprocal compensation is the single most

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36/ *American Tel. & Tel. Co.; Revisions to Tariff F.C.C. No. 259, Wide Area Telecommunications Service (WATS)*, Memorandum Opinion and Order, 84 F.C.C.2d 158, 170 (1980) ("*InWATS/OutWATS Order*").